IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.3464 OF 1998

M/s.Atlas Exporters (Paper Division) ...Plaintiffs

Versus

Thompson Press (India) Ltd. ...Defendants

Shri Darshan Mehta i/by Dhruv Liladhar & Co for the Plaintiffs.

CORAM : ABHAY S.OKA, J.
DATED : AUGUST 04, 2007.

ORAL JUDGMENT:

1. The suit is listed on the board under the caption "Undefended Suits for Exparte Decree". The learned counsel for the Plaintiffs has tendered on record an affidavit of Shri Ramsharan Sharma, an employee of the Plaintiffs. The affidavit is marked "X" for identification and is taken on record. The learned counsel has tendered 12 documents alongwith a list. The said documents are taken on record and marked "Y" (collectively) for identification.

2. The Plaintiffs have filed this suit for recovery of a sum of Rs.83,242/- as per the particulars of claim which are annexed and marked as Exhibit D to the plaint.

3. According to the case of the Plaintiffs they are dealers in and supply various kinds of papers. The

Defendants are printers. In the second week of August 1996, the Defendants placed with the Plaintiffs an order for purchase of 120 packets of Sunlit Art Board of 56.0 X 71.0 GSM 175 RM Wt 10.4 at the rates agreed upon. The total cost of the goods was Rs.62,001/-. As per the order of the Defendants, the plaintiffs supplied and sold the goods to the Defendants on 12th August, 1996. The delivery of the goods was made in Bombay. The goods were duly received at Bombay by the Defendants under delivery chalan dated 12th August, 1996. The Plaintiffs raised their bill dated 12th August, 1996 in the sum of Rs.62,001/-.

4. According to the case of the Plaintiffs it was agreed between the parties that price of the goods was to be paid immediately and in default, interest was to be paid at the rate of 24 per cent per annum by the Defendants to the Plaintiffs.

5. According to the case of the Plaintiffs they received a letter dated 21st August, 1996 from the Defendants in which it was alleged that the goods supplied by the Plaintiffs were of inferior quality and while printing, the paper supplied by the Plaintiffs generated blisters and the layer was coming out. The Plaintiffs were called upon to collect the remaining

material from Madras where the same was taken by the Defendants for printing. the Plaintiffs by their letter dated 24th August, 1996 informed the Defendants that they had given the delivery of the papers to the Defendants in its godown at Bombay and therefore, the Defendants were requested to give delivery at Bombay. As the Defendants did not deliver the goods, the Plaintiffs by their fax message dated 23rd November, 1996 reminded the Defendants to pay the amount. In response, a fax message was received from the Defendants stating that the paper was returned to the Plaintiffs and no amount was due and payable by the Defendants. Though a fax message was sent by the Plaintiffs on 25th November, 1996 calling upon the Defendants to inform them as to when the papers were returned, the Defendants in reply to the said fax message made endorsement on the copy of the said fax message to the effect that letter dated 21st August, 1996 sent by them to Mr.Gopal was self explanatory. Another fax message was sent by the Plaintiffs on 26th November, 1996. An endorsement was made on the said fax message by the Defendants to the effect that they had already returned inferior goods to the Plaintiffs. The Plaintiffs by another fax message dated 26th November, 1996 called upon the Defendants to return back all the material. As no response was received to the said fax message, the Plaintiffs issued

another fax message dated 02nd December, 1996 to the Defendants.

6. By notice dated 11th December, 1996 sent by the Advocate for the Plaintiffs the Defendants were called upon to either return back the material supplied or to pay a sum of Rs.62,001/- with interest thereon at the rate of 24 per cent per annum. A reply dated 30th May, 1997 was sent by the Defendants to the said notice reteirating that the goods supplied were of inferior quality and the same were returned to the Plaintiffs. The Advocate for the Plaintiff issued a rejoinder dated 26th June, 1997 recording that the material was never returned.

7. According to the Plaintiffs the goods were neither returned nor the payment of the price was made by the Defendants and therefore, the present suit has been filed. In the affidavit of Mr. Ramsharan Sharma it is stated that the Plaintiffs had misplaced the invoice dated 12th August, 1996 issued to the Defendants as well as the delivery chalan dated 12th August 1996. It is stated that despite diligent search, the office copy of the said documents could not be located. Therefore, the Plaintiffs have annexed true xerox copies of the said two documents to their affidavit. In view

of the statement made on oath that despite diligent search, the said documents could not be found, the Plaintiffs are entitled to lead secondary evidence of the said documents by producing photocopies.

8. I have perused the documents produced by the Plaintiffs alongwith the list (marked Y collectively). There is no written statement filed by the Defendants. In view of the said documents on record, the Plaintiffs are entitled to a decree as prayed. In so far as further interest is concerned, considering the facts and circumstances of the case, the interest will have to be allowed at the rate of 12 per cent per annum.

9. Hence, the suit is decreed in terms of prayer clauses (a) and (b) with modification that further interest on the sum of Rs.62,001/- will be payable at the rate of 12 per cent per annum from the date of the suit till payment and/or realisation.

10. The Plaintiffs will be entitled to refund of court fees as per the rules. Certified copy is expedited.

JUDGE